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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 GABRIEL WILSON,

9 Plaintiff,

10 v.

11 PIERCE COUNTY, a municipal
12 corporation organized under the laws of
13 the State of Washington, PIERCE
14 COUNTY JAIL, PIERCE COUNTY
15 JAIL CORRECTIONAL OFFICERS
16 JOHN DOE (1) and JANE DOE (1),
17 Nurses STEVE CARVER RN, KRISTIN
18 BERRES, RN,

15 Defendants.

16 PIERCE COUNTY,

17 Third-Party Plaintiff,

18 v.

19 NAITAALII JEOVAN TOLEAFOA,
20 JOHN DOES 1-3, and CORRECT CARE
21 SOLUTIONS, LLC,

22 Third-Party Defendants.
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CASE NO. 16-5455 RJB

ORDER ON THE PARTIES'
STATUS REPORTS

1 This matter comes before the Court on the status reports of Plaintiff (Dkt. 64), Defendant
2 Correct Care Solutions, LLC (Dkt. 65), and Defendant Pierce County, Washington (Dkt. 66) and
3 the Third-Party Defendant Correct Care Solutions, LLC's Motion to Dismiss Pierce County's
4 Third Party Complaint (Dkt. 67). The Court has considered the reports, the motion, and the
5 remaining file herein.

6 Plaintiff, a former prisoner, asserted claims against the Defendants for two distinct
7 events: the medical treatment of a leg lesion and a physical attack by a rival gang. Dkt. 26.
8 Plaintiff made claims for violation of his eighth amendment rights and for negligence against
9 Defendants Steve Carver and Kristin Berres for medical treatment of a leg lesion. *Id.* Plaintiff
10 asserted a negligence claim against Defendant Pierce County in connection with the medical
11 treatment of his leg lesion. *Id.* Plaintiff alleged claims against Defendant Pierce County for
12 violation of his federal constitutional rights and for negligence when it housed him in the jail
13 with violent rival gang members who beat him. *Id.* The Second Amended Complaint also
14 asserted claims against "Defendants Pierce County correctional officers John Doe (1) and Jane
15 Doe (1)" for violation of Plaintiff's eighth amendment rights and for negligence in connection
16 with the gang attack. *Id.*

17 To the extent it is found liable for the Plaintiff's claims against it related to the attack,
18 Defendant Pierce County asserts cross claims against Naitaalii Jeovan Toleafoa. Dkt. 31. To the
19 extent it is found liable for the treatment of Plaintiff's leg lesion, Defendant Pierce County also
20 makes cross claims against Correct Care Solutions LLC. *Id.*

21 **I. FACTS AND PROCEDURAL HISTORY**

22 The facts and procedural history are in the Court's September 5, 2017 Order on
23 Defendants Steve Carver and Kristin Berres's Motion for Summary Judgment (Dkt. 62, at 1-3)
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1 and the September 5, 2017 Order on Defendant Pierce County, Washington’s Motion for
2 Summary Judgment (Dkt. 63, at 1-8).

3 Defendants Carver and Berres’ motion to summarily dismiss Plaintiff’s claims against
4 them for violation of his eighth amendment rights and for negligence regarding the treatment of
5 his leg lesion was granted, and the claims were dismissed. Dkt. 62.

6 Defendant Pierce County’s motion for summary dismissal of all the federal constitutional
7 claims asserted against it was granted on September 5, 2017, and the constitutional claims were
8 dismissed. Dkt. 63. The County also moved for summary dismissal of all Plaintiff’s state law
9 claims, including Plaintiff’s negligence claims. Dkt. 48. Plaintiff did not respond to the motion
10 to dismiss the state law and/or negligence claims. Dkt. 53. In granting the motion to summarily
11 dismiss the negligence claims against the County, the Order provided:

12 In Washington, “[a]n actionable claim for negligence includes four
13 essential elements: (1) a duty owed to the complaining party; (2) a breach of that
14 duty; (3) resulting injury; and (4) proximate cause between the breach and the
15 resulting injury.” *Stenger v. State*, 104 Wn.App. 393, 399 (2001)(citing *Pedroza*
v. Bryant, 101 Wn.2d 226, 228 (1984)).

16 1. Negligence Claim Regarding Gang Attack

17 Plaintiff does not oppose the County’s motion to summarily dismiss this
18 claim. Moreover, Plaintiff has failed to point to sufficient facts to support his
19 state claim for negligence against the County regarding the gang attack. Plaintiff
20 has failed to point to evidence that the County breached its duty to protect him
21 when it housed him with rival gang members. He has failed to point to evidence
22 that inmates were allowed to roam “unsupervised.” He failed to demonstrate that
23 he was beaten as a result of the County’s failure to have a policy to address the
24 housing of rival gang members or as a result of the staffing decisions/monitoring
practices of the jail. Defendant Pierce County’s motion to summarily dismiss the
negligence claim based on the attack should be granted.

21 2. Negligence Claim Regarding Leg Lesion

22 Plaintiff’s claim for negligence, based on the treatment of his leg lesion,
23 asserted against Defendant Pierce County, should be dismissed. Plaintiff did not
24 oppose summary dismissal of this claim. In any event, he fails to point to any
evidence that Defendant Pierce County breached its duty of care to him. Further,

1 he has failed to point to any evidence that he was injured as a result of the
2 County's actions.

3 Dkt. 63, at 15-16. That order further noted that it was not clear which claims, if any, remain for
4 trial, which is set to begin on November 6, 2017. *Id.*, at 16. It provided that "[b]y this order, all
5 claims asserted against Pierce County, Washington are dismissed." *Id.* Parties were ordered to
6 file a status report, on or before September 22, 2017, informing the Court which claims, if any,
7 remain for trial. *Id.*

8 The parties have now done so (Dkts. 64-66) and Third-Party Defendant Correct Care
9 Solutions, LLC has filed a Motion to Dismiss Pierce County's Third Party Complaint (Dkt. 67).
10 Defendants assert that nothing remains for trial. Dkts. 65 and 66. Plaintiff maintains that his
11 claim for negligence against the "John and Jane Doe" officers and his claim against Pierce
12 County for "respondeat superior" remain for trial. Dkt. 64.

13 This opinion will again address the various issues raised in these reports (and by motion) as
14 they relate to the two events.

15 II. DISCUSSION

16 A. CLAIMS RELATED TO MEDICAL CARE FOR LEG LESION

17 **Pierce County, Washington's Claims Asserted Against Third Party Defendant**
18 **Correct Care Solutions, LLC.** Correct Care Solutions reports that there are no remaining
19 claims asserted against it. Pierce County agrees that there are no triable claims remaining against
20 Correct Care Solutions, LLC. Dkt. 66. Although it is not yet ripe, Third-Party Defendant
21 Correct Care Solutions, LLC's Motion to Dismiss Pierce County's Third Party Complaint (Dkt.
22 67) is unopposed and so, should be granted. Pierce County's claims against Third-Party
23 Defendant Correct Care Solutions should be dismissed.

1 **B. CLAIMS RELATED TO GANG ATTACK**

2 **Plaintiff's Respondeat Superior Claims Against Pierce County.** Plaintiff maintains in
3 his report that "Pierce County is liable for the actions or inactions of the Pierce County
4 Corrections staff under respondeat superior." Dkt. 64. In Washington. "[u]nder respondeat
5 superior, an employer is vicariously liable to third parties for torts committed by the servant
6 within the scope of employment." *Wilcox v. Basehore*, 187 Wn.2d 772, 783 (2017)(*internal*
7 *citation omitted*).

8 In its' report, Pierce County asserts that no claims against it remain, even for respondeat
9 superior. Dkt. 66. It points out that the September 5, 2017 order that granted its' motion for
10 summary judgment on **all** claims specifically provided that "[a]ll claims asserted against
11 Defendant Pierce County are dismissed." *Id.* (*quoting* Dkt. 63). It notes that Plaintiff did not
12 oppose the motion to dismiss the state law claims. *Id.* It further asserts that the Second
13 Amended Complaint does not make a claim against Pierce County for any claim under the theory
14 of respondeat superior.

15 All claims against Pierce County have been dismissed with prejudice. Dkt. 63. The
16 Court's order for the parties to file status reports was not an invitation to Plaintiff to add a claim
17 against a party that has been dismissed. No claims remain against Pierce County for trial.

18 **Plaintiff's Negligence Claims Against "Correctional Officers John Doe (1) and Jane**
19 **Doe (2)."** In his report, the Plaintiff states that he believes that the negligence claim against John
20 and Jane Doe officers remain for trial. Dkt. 64.

21 In its report, Defendant Pierce County argues that the negligence claim against the John
22 and Jane Doe officers do not remain for trial because: (1) the deadline for adding new parties
23 lapsed on December 30, 2016 (Dkt. 39), and Plaintiff still has not identified those parties despite
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1 being on the eve of trial, (2) this Court does not have personal jurisdiction over the John or Jane
2 Doe officers because they have never been served with a copy of a summons or complaint; (3)
3 any attempt to join the John or Jane Doe officers would be futile because the three year statute of
4 limitations on the April 2014 gang attack has long since expired. Dkt. 66.

5 This Court does not have personal jurisdiction over “John Doe or Jane Doe” defendants
6 because they have not been served with either a summons or complaint, and so the Court does
7 not have jurisdiction to try a case against them. “Before a federal court may exercise personal
8 jurisdiction over a defendant, the procedural requirement of service of summons must be
9 satisfied.” *Omni Capital Int’l, Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987).

10 Moreover, the deadline to name additional parties lapsed over nine months ago. The discovery
11 deadline and the dispositive motions deadlines have expired. Plaintiff makes no effort to identify
12 these defendants. Plaintiff’s claims against the “John Doe or Jane Doe” defendants should be
13 dismissed without prejudice.

14 **Pierce County, Washington’s Claims Asserted Against Third Party Defendant**
15 **Naitaalii Jeovan Toleafoa.** Pierce County asserts that none of Plaintiff’s claims remain for trial,
16 and, so none of its claim for indemnity remain. Dkt. 66. Accordingly, Pierce County,
17 Washington’s claims asserted against Third-Party Defendant Naitaalii Jeovan Toleafoa should be
18 dismissed.

19 **III. ORDER**

20 Therefore, it is hereby **ORDERED** that:

- 21 • Third-Party Defendant Correct Care Solutions, LLC’s Motion to Dismiss Pierce County’s
22 Third Party Complaint (Dkt. 67) **IS GRANTED**;

- 1 • All claims asserted against Third-Party Defendant Correct Care Solutions, LLC **ARE**
- 2 **DISMISSED;**
- 3 • All Plaintiff's claims asserted against Pierce County **ARE DISMISSED**, including
- 4 Plaintiff's attempts to assert a respondeat superior claim against Pierce County;
- 5 • Plaintiff's negligence claims against "John Doe and Jane Doe Corrections Officers" **ARE**
- 6 **DISMISSED WITHOUT PREJUDICE;**
- 7 • Pierce County, Washington's claims asserted against Third-Party Defendant Naitaalii
- 8 Jeovan Toleafoa **ARE DISMISSED;** and
- 9 • This case **IS CLOSED.**

10 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
11 to any party appearing *pro se* at said party's last known address.

12 Dated this 26th day of September, 2017.

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14 ROBERT J. BRYAN
15 United States District Judge
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